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ONE HUNDRED NINTH CONGRESS

# Congress of the United States

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## MEMORANDUM

To: Members of the Subcommittee on National Security, Emerging  
Threats, and International Relations

From: Christopher Shays   
Chairman

Date: September 14, 2006

Re: Briefing memo for September 19, 2006 Subcommittee hearing.

Attached find the briefing memo required by Committee rules  
for the hearing entitled *Combating Terrorism: Lessons Learned  
from London*. The hearing will convene September 19, 2006 at  
1:00 p.m., room 2154 Rayburn House Office Building in  
Washington, D.C.

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September 14, 2006

## MEMORANDUM

To: Members of the Subcommittee on National Security, Emerging Threats, and International Relations

From: Ms. Elizabeth Daniel, Professional Staff *ED*

Re: Briefing memo for the hearing *Combating Terrorism: Lessons Learned from London* scheduled for September 19, 2006 at 1:00 p.m., room 2154 Rayburn House Office Building in Washington, D.C.

## PURPOSE OF THE HEARING

In light of British success disrupting the recent alleged airline bomb plot, the hearing will examine possible areas where U.S. counterterrorism capabilities could be strengthened.

## HEARING ISSUES

1. What can the United States counterterrorism apparatus learn from British disruption of the alleged bomb plot?
2. How could the United States improve its existing counterterrorism strategies, policies and laws to operate more effectively?

## **BACKGROUND**

On August 10, 2006 United Kingdom (UK) authorities announced they had disrupted a plot to hijack as many as ten aircraft headed from the United Kingdom for the United States.

The disruption of this alleged plot represented success for UK and allied counterterrorism officials. The outcome can be attributed to multiple levels of international cooperation, local cooperation, and operational flexibility. Press reports indicate that the investigation had been going on for months, and had involved significant interagency and international cooperation, including with U.S. agencies. As American authorities praise the British system, they also self-reflect on the nature of this ongoing international terrorist threat and the needed responses. Newspaper analysis pieces and think tank policy papers have broadly considered what factors contributed to Britain's success that the US might emulate; on August 15, Attorney General Gonzales ordered a comprehensive review of US and UK anti-terror laws. (**Web Resource 1**)

## **TIMELINE OF BRITISH TERROR PLOT**

Twenty-one people were arrested in Britain on August 10 in connection with the alleged airline bomb plot. Through the end of that month, authorities publicly disclosed a series of further arrests, releases, and charges on various allegations of conspiracy to murder, preparing acts of terrorism, and failing to disclose information that could have prevented a terrorist attack, among others. (Some speculated that Britain's announcement of any information concerning the British plot, unusual in that country, was only to allay suspicions among the public that the threat was either nonexistent or exaggerated.) (**Web Resource 2, Attachment 1**)

By now, despite British strictures on what may and may not be disclosed about the case and its ongoing investigation, it is clear that the UK is succeeding in its efforts to detect, prevent, and prosecute those involved in terrorism plotting.

## KEY DIFFERENCES IN UK COUNTERTERRORISM CAPABILITIES

Following are brief descriptions of differences between UK and US counterterrorism efforts most often referred to in the media.

- Forms of government. According to CRS, “At the political level, one fundamental difference between the British and United States’ system of democratic governance is that while Britain does not have a written constitution which specifies the rights of individuals, the United States does. Moreover, the British system focuses national political power in a unitary Parliament, while in the United States power is shared through federalism. Such differences may have important consequences for how individual rights and freedom are weighed against a nation states’ obligation to provide security for its population. **(Web Resource 5)**
- Privacy and civil liberties. The Bill of Rights and the Constitution, which do not have British equivalents, protect the American individual from government interference. In a counterterrorism surveillance context, this translates into more protection against government snooping but also more red tape when the US government wants to pursue a suspect. **(Web Resource 4)**
- Surveillance and monitoring. Cameras monitoring public areas are much more prevalent in the UK than in the US. In addition, British police can use “control orders” issued by the Home Secretary to monitor and sometimes restrict movement of terrorist suspects. **(Attachment 3)**
- Detention. In the United Kingdom, following new legal revisions in 2006, suspects may be held 28 days without charges.<sup>1</sup> In the United States, the present limit is 48 hours.<sup>2</sup> This shorter detention time can limit US capacity in complex cases involving multiple countries, interpreters, detailed examination of computer hard drives, and more. **(Attachment 2, Web Resource 3)**

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<sup>1</sup> Tony Blair’s government had been advocating for this law to extend detentions to 90 days, but the proposal did not get past Parliament. See Web Resource 12 for UK counterterrorism strategy.

<sup>2</sup> Recent history has demonstrated exceptions to this in terrorism cases involving potentially useful material witnesses and “enemy combatants” at Guantanamo Bay.

- Information sharing with the public. British law enforcement officials and other authorities are typically much more reticent about ongoing legal cases and investigations. In part, this is related to strict British contempt-of-court laws intended to prevent prejudicing of trials. **(Attachment 2)**
- Police relationships within communities. In the United Kingdom, there are no legal restraints against police or MI-5 attendance at public religious or political meetings.<sup>3</sup> In the United States, the FBI is still prevented from attending some public meetings. Changes to this FBI constraint are hindered by reluctance to challenge public opinion related to profiling if, for example, the FBI were to openly attend meetings at what was known to be a radical mosque. Additionally, some perceive a longstanding atmosphere of distrust among the American public of US law enforcement agencies, dating from past events like the Nixon wiretapping, translating to hesitancy to cooperate. **(Web Resource 3)**
- International intelligence cooperation. The British have a smaller national security bureaucracy, which allows them to act more quickly. The UK also has a history of greater cooperation with regimes with poor human rights records, such as Pakistan, where the US would hesitate to establish a partnership. **(Attachment 3)**

Broader areas of contrast between American and British counterterrorism capabilities relate to contextual, organizational, and historical differences between the two nations.

## CULTURAL CONTEXT

In addition to governmental differences, the United Kingdom and the United States have significantly different cultural contexts in which threats and prevention of domestic terrorism take place. In the case of the alleged bomb plot in Britain, investigations and arrests were connected to the Pakistani British community.

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<sup>3</sup> Parker, Tom. "Counterterrorism Policies in the United Kingdom." In Kayyem, Juliette, Protecting Liberty in an Age of Terror. Cambridge, MA: The MIT Press, 2005.

Britain's population demographics have changed significantly in recent decades, and especially in the last ten years, because of an immigration spike across multiple groups. This leads to questions about whether and how newcomers would assimilate compared with their predecessors. Indeed, those accused of involvement were by and large people born and raised in Britain or were the children of immigrants, leading to the term "homegrown terrorism."

The United Kingdom has domestic experience with extremist versions of Islam which are different from its neighbors in Europe, and unlike the United States. Some suggest the development of extremist thought is connected to changing population demographics and a weaker sense of belonging, resulting in vulnerability to extremist recruitment efforts. Some extremist clerics in Britain, largely connected to Pakistan, are able to carefully and successfully recruit from among UK youth. **(Attachment 4)** In addition, among the general population, *The Guardian* of London quoted poll statistics showing that "only half the British Muslims questioned said they thought of Britain as 'my country,' whereas nearly a quarter said they thought of it as 'their country'—meaning someone else's. The younger respondents were, generally, the greater the alienation." **(Attachment 5)**

In the United States, by contrast, immigrants from Pakistan in particular experience greater assimilation, higher mean household incomes than the average American household, and a more educated population generally compared to the Pakistani population in Britain. In the US, the "melting-pot meritocracy" allows for simultaneous retention of identity and assimilation that has historically succeeded across virtually all immigrant groups. **(Attachment 6)**

### **MI-5 and the FBI**

Counterterrorism work is organized differently in the US and the UK. The Federal Bureau of Investigation (FBI) is the closest equivalent to the UK's Security Service, better known as MI-5. MI-5 is purely a domestic intelligence service without law enforcement responsibilities. In contrast, the FBI has law enforcement capabilities tied up with its investigative work, and does not focus with near-exclusivity on counterterrorism work.

MI-5 is responsible for protecting the UK against threats to national security. They focus on the intelligence component of domestic and international

counterterrorism, a priority that consumes 87 percent of the agency's annual budget. **(Web Resources 6, 7)**

At the organizational level, the United Kingdom (U.K.) has chosen to separate its domestic intelligence entity (MI-5) from its various law enforcement agencies. The United States, however, has chosen to combine both federal law enforcement and domestic intelligence within the Federal Bureau of Investigation (FBI) -- an agency of the Department of Justice. Each organizational approach is the result of a complex interaction among societal cultures, unique experiences with terrorism, law enforcement and intelligence organizational cultures, legal precedents, and other factors. A core question involves the possible integration of domestic intelligence and law enforcement functions. Integration may improve coordination of these two functions, but may also undermine the focus and development of skill specialization necessary to succeed in each area.

**(Web Resource 5)**

In addition, MI-5 has the benefit of secrecy surrounding its investigations:

..(N)one of [MI-5's] investigative techniques or paperwork...will ever be disclosed to inquisitive defense lawyers. Only rarely are MI-5 officers required to give evidence in court, and when they do they are invariably granted anonymity and are allowed to testify from behind a screen. In contrast, every step taken by the FBI in an investigation is subject to the full rigor of the law, with the interests of a future prosecution in mind...

**(Web Resource 8)**

In the United States analysts most often come to the conclusion that while each agency has its individual merits, some of which would benefit the other nation, each is developed to best respond to the respective national security environment. **(Web Resource 8)**

## **HISTORICAL CONTEXT**

The UK has much more counterterrorism experience than the United States. In the United States, the history of dealing with international terrorism acts on U.S. soil is relatively new, dating to the 1993 attacks on the World Trade Center. For the Federal Bureau of Investigation, counterterrorism operations only date to post-September 11 efforts. Since 9/11, the focus of government departments and law enforcement agencies has shifted to prioritize national security, information sharing, and other preventative measures, particularly

after recommendations of the 9/11 Commission that found the national security apparatus too disjointed. **(Web Resource 9)**

In the United Kingdom, by contrast, terrorism on British soil has been a problem for decades, dating from 1970s Irish counterterrorism. The security apparatus that evolved over those years to detect, prevent and combat it is thus very institutionally well-developed. Britain now draws on its experience with Irish counterterrorism work in present efforts to combat Islamist terrorism. **(Web Resource 3)**

## **COUNTERTERRORISM LEGISLATION: LEGAL REFORMS**

Both the United States and Britain have made changes to strengthen their counterterrorism capabilities in recent years.

In the United States, the post-September 11 reexamination of counterterrorism laws and procedures led to an overhaul of national security legislation through the authorization and renewal of the PATRIOT Act **(Web Resource 10)**, creation of the Intelligence Reform and Terrorism Prevention Act of 2004 **(Web Resource 11)**, and reforms enacted following the 9/11 Commission Recommendations **(Web Resource 9)**. Broadly, these changes improved interagency information sharing and coordination, strengthened tools to detect and disrupt terrorist financing, increased surveillance, and offered direction on relations with foreign countries and entities. In the broadest sense, these pieces of legislation helped American law enforcement deal with domestic counterterrorism procedures, and are reflective of a national paradigm shift from a focus on post-crime law enforcement prosecution to pre-emptive counterterrorism solutions.

In Britain, longstanding domestic counterterrorism efforts had in recent years shifted from Irish terrorism to confront those the government refers to as “Islamist terrorism,” and will retain that focus into the indefinite future. Legal reform efforts had been in place even before the July 7, 2005 attacks on London’s subway system. The national strategy for countering international terrorism is divided into four key areas: PREVENT, concerned with “tackling the radicalisation of individuals;” PURSUE, which seeks to disrupt terrorists and their operations; PROTECT, concerned with reducing national vulnerability at home and abroad; and PREPARE, which plans for post-attack readiness. This sense of inevitability of another attack is prevalent in the British mentality but more limited in the United States.

**(Web Resource 12)**



## DISCUSSION QUESTIONS

### 1. What can the United States counterterrorism apparatus learn from British disruption of the alleged bomb plot?

The success of this operation, and the fact that it involved international and American cooperation, should indicate that some of the intelligence and information sharing reforms the United States has implemented appear to be consistent with what is needed. **(Web Resource 13)**

Within that context, this operation proves the gathering of information through public surveillance is essential for defense. Intelligence agencies must continue to monitor the systems of travel, finance, and communications that terrorists rely on, both for detection and prevention. **(Web Resource 14)**

Further, the multi-party coordination, flexibility, timing, and organization that led to the disruption of this alleged plot indicate the importance of being able to react quickly. This is another area where the British come out ahead with less red tape involved in their various security apparatuses. **(Attachment 3)**

Some suggest the United States' current resource focus on physical security over pre-emptive investigation leads us to learn of and react to threats too late. Perhaps we are entering the game too late if we concentrate on security rather than intelligence and investigation. **(Web Resource 15)**

Security experts and lawmakers must recognize the Global War on Terror is a long-term one and the threat will not go away with short-term, band-aid security measures designed to react to each subsequent terrorist attempt or attack. Short-term "knee-jerk solutions" will only waste resources. **(Web Resource 13)**

Relatedly, a Washington Post editorial cautions against reacting to limited information about a threatening situation by immediately suggesting major changes. The article noted that "...it is worth remembering how little the public knows about this plot when considering the often far-reaching policy recommendations to which it has given rise." **(Web Resource 16)**

The present United States counterterrorism apparatus is still feeling its way under new legislation, changing management, and reconfigured communication channels. Thus it is at a point where it is operationally more open to change, but its leadership also requires more time to understand what the most effective components will be within this new framework. The cautions against quick changes to U.S. regulations in order to emulate British success are appropriate. The most important lesson the United States can take from London's experience is the necessity of flexibility, and the willingness to cooperate across international borders even with those like Pakistan who are not fully U.S. allies.

## **2. How should the United States improve its existing counterterrorism strategies, policies and laws to operate more effectively?**

Some suggest that the United States' counterterrorism apparatus is now overly focused on security rather than pre-emptive intelligence gathering. "Denying the terrorists funding, striking at their bases and training camps, holding accountable governments that promote terror and harbor terrorists, and building democracy around the world are all necessary measures in winning the war. None of these, however, can substitute for anticipating and thwarting terror operations as the British have done. This requires the development and exploitation of intelligence." (**Attachment 3**)

One suggested way to increase available investigative information is to bring back open source data mining operations in order to identify and track terrorist activities. This practice of analyzing vast amounts of public information was widely criticized on civil liberties grounds but was later found by the Supreme Court to be legal because "the customer has already voluntarily turned over the information to a third party." It is suggested that Congress "establish federal guidelines for the use of these technologies as a way to allay civil liberties concerns." (**Web Resources 17, 18**)

Increased surveillance is further suggested in the form of revived warrantless interception of telephone and internet calls. Though this practice caused outrage among some Americans when it was revealed to be taking place for counterterrorism purposes, others argue that constitutional arguments against it are weak, and that it can serve as a valuable counterterrorism tool. (**Web Resource 19**)

Empower local law enforcement and the general public. To some degree, this is already being practiced in the United States. USA Today reported last month on Highway Watch, a Department of Homeland Security (DHS) program originally designed for safety that shifted its focus post-9/11 to counterterrorism. **(Attachment 7)** News sources widely report that local inside information tipped off the UK security service to the alleged airline bomb plot.

In recent years, the US / UK special relationship has come under threat as the British public increasingly opposes close ties with the United States in favor of a closer relationship with European allies. Given the success of transatlantic counterterrorism operations like this one, British and American authorities should take measures to maintain that relationship by ensuring continued dialogue and exchange of ideas. **(Web Resource 20)**

Given the significantly different intelligence and law enforcement cultures between Britain and the United States, and in large part the specifics of each country's agencies speaks to idiosyncrasies of their respective national security situations. The willingness to want to adopt the successful measures of the other should be taken in this context.

It is encouraging that the United States continues to self-examine and critique its counterterrorism policies for areas of improvement. What needs to happen first is legal clarification and some degree of public consensus on what security measures can and cannot be constitutionally allowed. Lack of public support for measures such as increased surveillance or police infiltration will contribute to a useless "us-them" mentality separating intelligence and security operations from the general public and stifling information exchange. Once consensus is reached, the United States could benefit from greater emphasis on pre-emptive intelligence work within a transparent legal framework.

## **WITNESS TESTIMONY**

Witnesses were told the purpose of the hearing is to examine the British success disrupting the recent alleged airline bomb plot and to determine areas where U.S. counterterrorism capabilities could be strengthened.

They were asked to describe their understanding of the motives, planning and tactics of the London bomb plotters in order to contextualize this particular case. Witnesses will compare the effectiveness of UK and US counterterrorism laws, respective government counterterrorism agency organization, civil liberties laws, and the utility in the United States of such British instruments as MI-5 and the UK Official Secrets Act.

## **WITNESSES**

### **Panel One**

**Representative** (unconfirmed)  
Department of Homeland Security

**Mr. John Rollins**  
Foreign Affairs, Defense, and Trade Division  
Congressional Research Service

**Baroness Kishwer Falkner of Margravine**  
Member, House of Lords, United Kingdom  
Fellow, Institute of Politics, Harvard University

**Mr. Tom Parker**  
Former UK Counterterrorism Official  
CEO, Halo Consulting

**Mr. David Rivkin** (unconfirmed)  
Former Justice Department official during the Reagan and George H.W. Bush administrations  
Attorney in private practice

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